there is nothing to prevent it hearing the matter *de novo*, as for example if fresh evidence is found.

Powers of the Disciplinary Committee are more extensive than those of a mere filter and its composition is appropriate for the hearing and determination of matters concerning the conduct of a solicitor in his profession. It is unnecessary for the court to hear evidence in every disputed case. It can say as it did in this matter that the case can be proved before the Disciplinary Committee. This is not to deny that the court retains control and has a discretion to hold a rehearing in a proper case.

Their Lordships will accordingly allow the appeal so far as the finding against the appellant relates to the receipt of $500 party and party costs in addition to the solicitor and client costs.

The finding against the appellant that he entered into a champertous agreement with Cham Siew Wai will stand and the case will be remitted to the High Court of Singapore to reconsider the sentence passed upon the appellant if that court thinks fit.

There will be no order as to the costs of the appeal.

Order accordingly.

Solicitors: *Ingledew, Brown, Bennison & Garrett; T. L. Wilson & Co.*

NADCHATIRAM REALITIES (1960) LTD. v. MUNIAMMAH

[A.C.J. (Ismail Khan J.) July 22, 1966]

[Seremban — Civil Appeal No. 3 of 1966]

Master and Servant — Employment — Maternity allowance — Claim — Order of Commissioner for Labour — Application to set aside order — Application nullity — Employment Ordinance, 1955, ss. 4, 37, 69(1) and 77(1).

The respondent lodged with the Commissioner for Labour a claim for maternity allowance from the appellants under section 37 of the Employment Ordinance, 1955. The appellants who were summoned to attend, failed to be present at the hearing of the claim. The Junior Assistant Commissioner heard the respondent and made an order for the payment of $132 to her. The appellants then made an application to the Assistant Commissioner to have the order set aside. The issue was whether the Assistant Commissioner could entertain the application.

Held: (1) under section 69(1) of the Employment Ordinance, the Commissioner for Labour can decide a dispute between a labourer and his employer. An enquiry into any dispute between the employer and the female labourer with respect to maternity allowance falls within the second limb of the subsection although the subsection does not specifically provide for it;

(2) the only remedy open to a person aggrieved by a decision of the Commissioner for Labour under section 69 is an appeal to the High Court under section 77(1);

(3) section 4 of the Ordinance cannot be invoked by the appellants because it excludes from its operation any decision under section 69(1). The step taken by the appellants in applying for a rehearing and in appealing against the refusal of such an application was not warranted by the provisions of the Ordinance and was therefore a nullity.

CIVIL APPEAL.

J. Nadchatiram for the defendants/appellants.

V. C. George for the complainant/respondent.

Ismail Khan J.: In this case the complainant/respondent lodged a claim with the Commissioner for Labour, Negri Sembilan, for maternity allowance from the defendants/appellants for the period of her disablement under section 37 of the Employment Ordinance, No. 38 of 1955.

The Junior Assistant Commissioner was satisfied that there should be an enquiry and accordingly a summons was issued to the defendants/appellants to attend such enquiry at 9.30 a.m. on 11th December, 1965. At the hearing the complainant/respondent was present but not the defendants/appellants.

Having heard the complainant/respondent, the Junior Assistant Commissioner made an order for payment to her by the defendants/appellants of the sum of $132. A copy of the said order was sent to the defendants/appellants with the intimation that they could appeal against the said order within fourteen days from 14th December, 1965.

On 27th December, 1965, the defendants/appellants made an application to the Assistant Commissioner for Labour, Negri Sembilan, to set aside the order and for a rehearing on the grounds set out in an affidavit in support thereof. I pause to observe that no merits were shown in the affidavit. The commissioner, however, declined to hear the application but informed the defendants/appellants by letter as follows:—

"It is regretted that the reasons advanced by you are not sufficiently good to warrant a rehearing."

Against this refusal to set aside the order and to rehear the case the defendants/appellants have appealed.

The question that falls to be decided is whether there is any jurisdiction on the part of the commissioner to hear the application. Under section 69(1) of the Ordinance the Commissioner for Labour can decide a dispute between a labourer and the employer. Section 69(1) is as follows:—

"The commissioner may inquire into and decide any dispute between a labourer and his employer or between a labourer and any person liable under the provisions of this Ordinance to pay any wages due to such labourer where such dispute arises out of any term in the contract of service between such labourer and his employer or out of any of the provisions of this Ordinance, and in

pursuance of such decision may make an order in the prescribed form for the payment by either party of such sum of money as he deems just without limitation of the amount thereof."

Although sub-section (1) of this section does not specifically provide for an enquiry into any dispute between the employer and the female labourer in respect of her maternity allowance, I am of the view it comes within the ambit of the second limb of the said sub-section which reads:—

"where such dispute arises . . . . out of any of the provisions of this Ordinance, and in pursuance of such decision may make an order . . . . for the payment . . . . of such sum of money as he deems just without limitation of the amount thereof."

Under section 37 of the Ordinance a female labourer is entitled to abstain from work before and after confinement and to an allowance for the period of her abstention from work consequent upon such confinement.

There is however no provision in the Ordinance comparable to Order 19 rule 3(3) of the Subordinate Courts Rules, 1950, which is as follows:—

"Any judgment or order given or made in the absence of a party may, on his application and if good reason for such absence be shown, be set aside and the proceedings may be reheard upon such terms as to costs or otherwise as the court shall think fit. Notice of such application shall be given to the opposite party."

The only remedy open to a person aggrieved by a decision or order of the commissioner under section 69 is an appeal to the High Court under section 77(1) of the Ordinance which reads:—

"If any person whose financial interests are affected is dissatisfied with the decision or order of the commissioner under section 69 or section 73 of this Ordinance such person may appeal to the High Court."

My attention has been drawn to section 4 of the Ordinance. Section 4 reads:—

"Any person affected by any decision or order, other than an order under section 69 or section 73 of this Ordinance, given or made by an officer appointed under subsection (2) of section 3, may, if he is dissatisfied with such decision or order, within fourteen days of such decision or order being communicated to him appeal in writing therefrom to the commissioner."

I cannot see how this section can be invoked as it, in express terms, excludes from its operation any decision under section 69(1) of the Ordinance.

The step taken by the defendants/appellants in applying for a rehearing and in appealing against the refusal of such an application is not warranted by any provision of the Ordinance and is therefore a nullity.

The appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Nadchatiram Bros.; H. W. Tan & George.*

TAN BING HOCK v. ABU SAMAH

[O.C.J. (Raja Azlan Shah J.) May 5, 1967]

[Raub — Civil Suit No. 5 of 1967]

Contract — Agreement to work forest area — Licence not transferable — Agreement amounting to assignment of rights in licence — Whether defence of illegality can be raised — Forest Rules, 1935, rr. 2 & 18

Injunction — Parties entering into illegal contract to deceive public administration — Contract executed and carried out — Whether illegality is good plea for a defendant.

Forest Rules, 1935 — Licence under rr. 2 & 18 — Agreement to work forest area — Whether contravenes rules.

The defendant held a licence to work forest area in Pahang under the Forest Rules, 1935. The licence was subject to certain conditions, in particular, it was not to be transferred by power of attorney to another person or by sub-letting or by other means and no sub-contracts or partnership might be made in connection with the said licence without prior approval in writing from the District Forest Officer.

The plaintiff alleged that there was an agreement entered into between him and the defendant in 1965 to work the forest area and sought an injunction to restrain the defendant from otherwise dealing, disposing etc. of the forest area in question and for a declaration that the defendant was liable to perform the covenants in the agreement. The question before the court was whether the agreement was illegal and if so whether the defendant could raise the defence of illegality.

Held: (1) the agreement in question was null and void and illegal as tending to contravene the provisions of rules 2 and 18 of the Forest Rules, 1935;

(2) in this case the defendant was not the party who sought to enforce the illegal contract; he came to court as a defendant, and it was within his province as a defendant to set up the defence of illegality.

Sarjan Singh v. *Sardara Ali* (2) and *Palaniappa Chettiar* v. *Arunasalam Chettiar* (3) distinguished.

Cases referred to:—

(1) *Leong Chek Pong & Anor.* v. *Lee Chick Yet* [1964] M.L.J. 209, F.C.

(2) *Sarjan Singh* v. *Sardara Ali* [1960] M.L.J. 52, P.C.

(3) *Palaniappa Chettiar* v. *Arunasalam Chettiar* [1962] M.L.J. 143, P.C.

CIVIL SUIT.

D. A. Devadason for the plaintiff.

Kam Woon Wah for the defendant.

Cur. Adv. Vult.

Raja Azlan Shah J.: The plaintiff brought this motion for an interim injunction to restrain the defendant from otherwise dealing, disposing, etc. of a forest area of 1,000 acres known as Block 19 in the District of Chegar, Perah, in the State of Pahang, and for a declaration that the defendant is liable to perform the covenants of an agreement entered between them and dated 30th August 1965.

At the outset it is necessary to say that on a motion like this it is usually undesirable to examine the evidence in detail because it so often happens that at the trial of the action when the witnesses go into the witness-box to give evidence